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No. 98-1250

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE, FRANK UNANUE, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Petition in this case seeks review of the same judgment as the petition in No. 98-1231, filed on behalf of the same Petitioner, and raises the same questions as are addressed in that petition. This Petition also raises the following additional question:

Did the courts below err in entering a money judgment against Petitioner individually, as well as Petitioner's bankruptcy estate, where (i) the United States District Court, in lifting the automatic stay, had expressly authorized Respondents to resume litigation against Petitioner, who was on notice at all times of the claims against him and actively participated in the defense of the action; and (ii) in any event, Petitioner's bankruptcy case was subsequently *dismissed* by the Bankruptcy Court, so that the estate's assets and liabilities reverted to Petitioner, and any distinction between Petitioner individually and his estate became moot?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Charles Unanue, also known as Ulpiano Unanue-Casal, Petitioner herein,* and the following parties who are named as Respondents in this Court: Goya Foods, Inc. ("Goya"), Joseph A. Unanue, and Frank J. Unanue, together with Carol Ann Unanue-Freeborg, C. Jeffrey Unanue, Robert I. Unanue, Mary Ellen (Unanue) Yorio, C. Randall Unanue, Joseph F. Unanue,** Thomas Unanue, Mary Carmen (Unanue) Norris, Mary Ann (Unanue) Quiñones, Mary Louise (Unanue) Guggenheim, Theresa Elizabeth Devir, Francisco R. Unanue, Mary Isabel (Unanue) McVicar, Carlos Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue, and Jorge Unanue (collectively, the "Beneficiary Respondents"). This Brief in Opposition is filed on behalf of all Respondents except C. Jeffrey Unanue.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6 of the Rules of this Court, Respondents state that the corporate Respondent, Goya, does not have any parent corporations, and that Cardet Wholesale Foods, Inc. is Goya's only nonwholly-owned subsidiary.

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* The Petition's contention that Petitioner Charles Unanue "was not a party in the proceeding below" (Pet. ii) is not accurate. (*See infra*, text at 5-10, 15-18)

** Joseph F. Unanue died on November 28, 1998.

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S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787 13

Respondents respectfully submit this Brief in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

STATEMENT OF JURISDICTION

The Petition in this case fails to properly invoke the jurisdiction of this Court. Petitioner cites 28 U.S.C. § 1254(1) as the basis for jurisdiction in this case (Pet. 3), but that statute confers certiorari jurisdiction upon this Court to review only decisions of the United States Courts of Appeals, and is inapplicable to this case in which Petitioner seeks review of a judgment and underlying orders of the New Jersey state courts. If this Court has jurisdiction, it is pursuant to 28 U.S.C. § 1257(a), which is not cited in the Petition. In any case, the Court lacks jurisdiction over the principal issue raised by the Petition because it is moot. (*See infra* at 12-14)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes upon which Petitioner relies are set forth in the Petition. (Pet. 3-4) However, Petitioner excerpts the section of the Bankruptcy Code on which he relies, 11 U.S.C. § 349(b)(2) and (3), in an incomplete and highly misleading fashion. The complete text of that statute is as follows:

> **§ 349. Effect of dismissal**
>
> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title —
>
> * * *
>
> (2) vacates any order, judgment or transfer ordered, *under section 522(i)(1), 542, 550, or 553 of this title;* and

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.[1]

PRELIMINARY STATEMENT

This Petition represents the culmination of a bitter intra-family dispute that has resulted in prolonged litigation between Petitioner, Charles Unanue, and numerous other Unanue family members over the past 30 years. The case principally involves Petitioner's claim that he is entitled to inherit certain assets from his father, who died in 1976. After eleven years of proceedings beginning in 1987, the New Jersey courts have decisively rejected Petitioner's state-law inheritance claim, as well as his related attempt to set aside two contracts that Petitioner and several family-owned companies had executed in 1972 and 1974 to settle prior litigation.

Petitioner, through the same law firm that has represented him in this matter since 1988, has filed a petition for certiorari to review the judgment and underlying orders entered against him in New Jersey (No. 98-1231). Respondents are filing, simultaneously herewith, their Brief in Opposition to that petition.

In addition to the petition filed by his long-time counsel, Petitioner has also filed this separate *pro se* Petition seeking review of precisely the same judgment below. Petitioner can offer no acceptable justification for his filing of two certiorari petitions on behalf of the same party to review the same judgment in the same case.[2] Petitioner's doing so is particularly egregious because he

1. The italicized words are misleadingly omitted, without any ellipsis or other indication, from Petitioner's quotation of the statute in the Petition. (Pet. 4; *see also* Pet. 25) This misquotation materially alters the meaning of the statute. (*See infra* at 19-20)

2. Petitioner's apparent explanation for submitting two overlapping petitions is that the petitioner in No. 98-1231 is "the Bankruptcy Estate of Charles Unanue," whereas this case is filed by Petitioner Charles Unanue (Cont'd)

previously was rebuked by the Appellate Division of the New Jersey Superior Court for virtually identical misconduct in filing two separate appeals there:

> At the outset, we doubt the procedural viability of [Petitioner's second] separate appeal. There is no reason why the issue [raised in that appeal] could not and should not have been raised in the main appeal. . . . A party is required to raise in a single appeal all of his challenges to the judgment appealed from. . . . [T]he filing of separate appeals by the same party from the same final judgment is an obvious, untenable, and intolerable violation of the overriding policy of judicial administration that litigation be conducted expeditiously, economically, and efficiently.

(Pet. in No. 98-1231, at 10a-11a)[3]

(Cont'd)
individually. Among the difficulties with this "explanation" is that Petitioner's bankruptcy case was *dismissed* by the United States Bankruptcy Court for the District of Puerto Rico on September 12, 1995, whereupon the "bankruptcy estate of Charles Unanue" *ceased to exist* by operation of law and cannot properly be considered a "party" to litigation separate from Charles Unanue himself. (*See infra* at 9-10, 13-14) Petitioner previously conceded as much: In the state-court appeals, Petitioner moved to substitute himself individually as a party to succeed the former "bankruptcy trustee," observing that "[o]n September 12, 1995, the Bankruptcy Court for the District of Puerto Rico dismissed Charles Unanue's bankruptcy petition without prejudice. As a result, all property of the bankruptcy estate, including the [bankruptcy] Trustee's Appeal, was revested in Charles Unanue pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody, Esq., dated Dec. 21, 1995, at 2) Given Petitioner's prior acknowledgment that the bankruptcy estate ceased to be a proper party to litigation some three and one-half years ago, we are at a loss to understand why Petitioner purports to have resurrected it as a petitioner, separate from himself, in this Court.

3. The Petition herein reflects that "the Clerk of this Court has granted this Petitioner use of [the] Appendix" in No. 98-1231. (Pet. 1 n.*)
(Cont'd)

Here, too, the *pro se* Petition in this case represents an unjustifiable duplication of the counseled petition in No. 98-1231. Petitioner's unnecessary filing of these two overlapping petitions, thereby burdening the Court and transparently evading the provisions of this Court's Rule 33.1(g)(1) governing the length of petitions for certiorari, in and of itself provides a sufficient basis for denying certiorari in both cases. In any event, even if considered on the merits, the Petition raises no non-frivolous issues, much less important questions of federal law warranting this Court's consideration.

COUNTERSTATEMENT OF THE CASE[4]

As noted above, the Petition for Certiorari in this case substantially duplicates the Petition in No. 98-1231. To avoid unwarranted duplication, Respondents respectfully refer the Court to their Counterstatement of the Case in their Brief in Opposition

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Accordingly, citations herein to the lower court opinions will be to the Appendix to that petition (in the form "Pet. in No. 98-1231, at __"). Similarly, the lower-court opinions and orders that are cited in the briefs in opposition are reproduced in the Appendix to Respondent's Brief in Opposition to that petition, and references here to those documents will be to that appendix ("Opp. in No. 98-1231, at __").

4. The Petition, including sections captioned "Background of the Case" (Pet. 5-9) and "Schemes and Conspiracies" (Pet. 9-18), contains vitriolic allegations of wrongdoing, by Respondents and others, and unsupported assertions of fact extending as far back as 1904. These portions of the Petition contain not a single citation to the record below, and virtually every paragraph contains allegations that are directly contrary to the facts that the state courts actually found. No effort is made in this Brief in Opposition to respond to all of Petitioner's factual allegations, which are almost entirely irrelevant to the question of whether certiorari should be granted. The fact that Respondents have confined this Brief in Opposition to relevant matters should in no event be deemed an admission that any of Petitioner's other allegations are accurate.

in that case in lieu of setting it forth at length again here, and summarize herein only the background relevant to the issues raised by this Petition that are not also presented in No. 98-1231, which concern the relationship between the New Jersey litigation and Petitioner's bankruptcy case in the District of Puerto Rico.

Respondents commenced the New Jersey litigation in the New Jersey Superior Court in August 1987. The Complaint, which raised state-law inheritance and contract issues, named Petitioner (individually) as a defendant. After extensive pretrial proceedings, the New Jersey Superior Court conducted a trial on an important issue before it, the domicile of Petitioner's father, over more than 170 trial days beginning in July 1989. That trial was just about to conclude when, on August 29, 1990, Petitioner filed his voluntary bankruptcy petition in the United States Bankruptcy Court for the District of Puerto Rico.

Upon Petitioner's bankruptcy filing, his nominal "estate in bankruptcy," as represented by a trustee, became a party to the New Jersey action. However, Petitioner remained the real party-in-interest, participated actively in the New Jersey litigation, and was personally responsible for arranging the retention and payment of counsel in the action. Indeed, at Petitioner's instance, the bankruptcy estate was represented for many years, in New Jersey and elsewhere, by the New Jersey attorney who had represented Petitioner individually since 1988 (and who remains Petitioner's counsel of record in No. 98-1231 in this Court).

Petitioner's bankruptcy case triggered an automatic stay of the New Jersey proceedings under 11 U.S.C. § 362.[5] In February

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5. As the District Court later held, Petitioner's obvious, and highly improper, motive in filing his bankruptcy petition was to obtain the automatic stay of the New Jersey action, just as the domicile issue was to be resolved. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. 90, 101-02 (D.P.R. 1993) (noting timing of Petitioner's filing and concluding that "it has every

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1991, the Bankruptcy Court modified the stay to permit the New Jersey Superior Court to determine the domicile issue, and on December 4, 1991, the New Jersey Superior Court ruled in Respondents' favor on that issue. Thereupon, Respondents sought further relief from the automatic stay to complete the New Jersey litigation, and on August 3, 1993, over Petitioner's objections, the United States District Court for the District of Puerto Rico (in a decision subsequently affirmed by the First Circuit Court of Appeals) vacated the automatic stay in its entirety, allowing the New Jersey action to continue against Petitioner. *Unanue-Casal v. Unanue-Casal,* 159 B.R. 90 (D.P.R. 1993), *aff'd mem.*, 23 F.3d 395 (table), 1994 WL 179925 (1st Cir. 1994). In its opinion granting relief, the District Court directed that "the litigation pending in New Jersey will proceed," *id.*, 159 B.R. at 102, and noted that one effect of its ruling was that "[i]f [Petitioner] were to lose in New Jersey then the Debtor would have a declaration against him under the 1974 Amendment for attorney's fees — no small sum. . . ." *Id.* at 99.

At least from that point forward, Petitioner was fully aware that he *and* his nominal estate were potentially liable for any judgment that could be rendered in New Jersey. Significantly, during a status conference in the New Jersey action on September 30, 1993, Petitioner's counsel acknowledged on the record in open court that Petitioner, individually, was "certainly a party in interest" in the New Jersey proceedings. (Tr. of Sept. 30, 1993 conf. at 5) Respondents did not disagree with that assertion, and to the contrary, they expressed no objection whatsoever to the trial judge's statement that either Petitioner individually, the bankruptcy trustee, both, or counsel for either would be welcome to appear,

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appearance of being the sole result of the Debtor's or his attorney's perceptions that he was going to lose in New Jersey"), *aff'd mem.*, 23 F.3d 395 (table), 1994 WL 179925 (1st Cir. 1994); *Goya Foods, Inc. v. Unanue-Casal,* 164 B.R. 216, 223 (D.P.R. 1993), *aff'd mem.*, 32 F.3d 561 (table), 1994 WL 408070 (1st Cir. 1994), *cert. denied*, 513 U.S. 1149 (1995).

submit papers, and orally argue in response to the motion for summary judgment that Respondents had indicated they were about to submit. (*See id.* at 22-25)

Nonetheless, in an effort to thwart or delay determination of the New Jersey litigation, Petitioner instructed his long-time counsel not to appear in opposition to Respondents' motion for summary judgment, and instead chose to appear *pro se* to argue that he was not before the court, for the transparent purposes of delaying the proceedings and attempting to create an impression that Petitioner was being treated unfairly. All the courts below — including the New Jersey Superior Court, as well as the Puerto Rico District Court that granted relief from the stay, and the First Circuit Court of Appeals in affirming that ruling — rejected Petitioner's contention to that effect, recognizing that Petitioner was at all times in control of the estate's legal representation and that Petitioner's long-time New Jersey counsel would have appeared in the case had Petitioner asked him to do so. As the First Circuit observed in denying Petitioner's motion for an emergency stay of the New Jersey proceedings, "the record strongly suggest[ed] that [Petitioner] has been manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute." (Opp. in No. 98-1231, at 4a) The First Circuit further noted:

> Movant's contention that his interests will not be represented in the New Jersey action because the bankruptcy trustee is unwilling or unable to appear is without merit. The New Jersey court has indicated that it would permit movant to appear on his own behalf. As the district court wrote, and as the record amply supports, movant "has demonstrated no problems hiring numerous lawyers and law firms for all of his suits."

(*Id.* at n.1)

On November 19, 1993, the New Jersey Superior Court granted Respondents' motion for summary judgment on the substantive inheritance and contract issues. On March 28, 1994, the New Jersey court granted a motion by Respondents for an award of their reasonable attorneys' fees and expenses incurred in their litigation with Petitioner, as authorized by an express provision of a 1974 settlement contract between the parties. After a hearing before a special master regarding the amount of fees to be awarded, the New Jersey court entered a final money judgment, dated February 23, 1995, in favor of Respondent Goya Foods, Inc. ("Goya"). At Respondents' request, the judgment was entered against both "Charles Unanue and the bankruptcy estate of Charles Unanue." (Pet. in No. 98-1231, at 213a)[6] In entering judgment in this form, the New Jersey Superior Court noted that although judgment was being entered against both Petitioner individually and the bankruptcy estate, "[i]t's clear, of course, that there is only one debt being imposed" and that Respondents were entitled

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6. Respondents' counsel explained the reasons for this form of judgment as follows:

> We framed it that way because when we obtained relief from the stay in the Bankruptcy Court, it was to permit us to continue and conclude this proceeding which, of course, predated the bankruptcy petition. We determined that since Charles Unanue was the defendant in this case, he is the proper person against whom the judgment should be entered, the stay having been lifted to permit just that fact, the entry of a judgment against party defendant Charles Unanue.
>
> However, because the [bankruptcy] trustee has also been a party in these proceedings, we felt that it would be appropriate to have the judgment run against not only Charles Unanue, but the Estate. . . . [W]e felt it was most appropriate so there would be no problem when we go back down to [the Bankruptcy Court in] Puerto Rico as a creditor . . . to have a liquidated claim against both Charles and the Estate.

(Pet. in No. 98-1231, at 204a-205a)

to only a single recovery. (Pet. 208a) Respondents did not, and do not, disagree.

Petitioner appealed the trial court determinations (including the money judgment) to the Appellate Division of the New Jersey Superior Court. While that appeal was pending, on September 12, 1995, the Bankruptcy Court in Puerto Rico granted a motion by the bankruptcy trustee to dismiss Petitioner's bankruptcy case "for cause" under 11 U.S.C. § 707(a), without granting Petitioner a discharge. In dismissing Petitioner's bankruptcy case, the Bankruptcy Court noted, *inter alia,* the absence of creditors "other than those involved in the family dispute" pending in New Jersey. (*See* Opp. in No. 98-1231, at 9a & n.3) The Bankruptcy Court also took note of a series of prior findings by the United States District Court, in its "relief from stay" and related decisions, that Petitioner's bankruptcy filing was "fraudulent," a "sham," and "a ruse designed to frustrate the legitimate rights of his adversaries." (*Id.* at 9a-10a & n.4)[7]

Upon this dismissal of the bankruptcy case (which was not appealed), the nominal "bankruptcy estate of Charles Unanue" ceased to exist, and all assets and liabilities of the estate reverted to debtor Charles Unanue pursuant to 11 U.S.C. § 349(b). Petitioner's counsel acknowledged, at that time, that upon such dismissal "all property of the bankruptcy estate . . . was revested

7. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. at 99-102, *aff'd mem.*, 23 F.3d 395; *Goya Foods, Inc. v. Unanue-Casal*, 164 B.R. at 217-18, *aff'd mem.*, 32 F.3d 561, *cert. denied*, 513 U.S. 1149. The Bankruptcy Court's and District Court's conclusion that Petitioner's "no asset" bankruptcy case was fraudulent proved correct: In 1997, after a ten-day bench trial, the United States District Court for the District of Puerto Rico found that in order to conceal assets from creditors, over a period of many years Petitioner had fraudulently hidden his assets (including valuable real estate in Puerto Rico, New York, Spain and France) in the name of his wife as well as an *alter ego* dummy Panamanian corporation whose owner was found to be a "fictional character." *See Goya Foods, Inc. v. Unanue-Casal*, 982 F. Supp. 103 (D.P.R. 1997), *appeals docketed,* Nos. 98-1553, 98-1554 (1st Cir. 1998).

in Charles Unanue pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody dated Dec. 21, 1995, at 2) As a result, Petitioner individually was substituted for the trustee as the sole appellant in the state court.

On May 19, 1998, after considering lengthy briefs and oral arguments submitted by all parties including Petitioner, the Appellate Division of the New Jersey Superior Court affirmed the trial court's judgment and all the orders appealed from. *Matter of Unanue*, 311 N.J. Super. 589, 710 A.2d 1036 (App. Div. 1998) (Pet. in No. 98-1231, at 3a-11a). The appellate court's opinion rejected Petitioner's challenges to the rulings below, specifically including his objection to the money judgment entered against him individually as well as the bankruptcy estate. (*Id.* at 10a-11a) On July 16, 1998, the Appellate Division denied Petitioner's motions for reconsideration. (*Id.* at 12a-13a) On November 2, 1998, the New Jersey Supreme Court denied Petitioner's applications for certification to review the Appellate Division judgment (*Id.* at 1a-2a), and on February 1, 1999, Petitioner filed his Petition for Certiorari in this case (as well as in No. 98-1231). For the reasons stated below, the requested writ should be denied.

REASONS FOR DENYING THE WRIT

Because a majority of the arguments contained in the Petition duplicate, at times verbatim, those presented in the petition in No. 98-1231, Respondents again respectfully refer the Court to the Reasons for Denying the Writ set forth in their Brief in Opposition in No. 98-1231 for their response to these contentions rather than burden the Court with a duplicative presentation.[8]

8. The duplicated arguments, discussed in Respondents' Brief in Opposition in No. 98-1231, include Petitioner's contentions herein that (i) the New Jersey courts denied him due process because they supposedly adjudicated a claim that had not been pleaded and of which he was not on notice, where in fact the record discloses that that issue was present in the case from its inception; (ii) the domicile of his father, for inheritance

(Cont'd)

The only arguments contained in the present Petition that are not duplicated in the companion case concern the relationship between Petitioner's bankruptcy case in Puerto Rico and the state-court litigation in New Jersey. In substance, Petitioner contends that because he was in bankruptcy during some of the New Jersey proceedings, the judgment rendered against him individually in New Jersey should not stand. However, the major issue that Petitioner seeks to raise in this regard has been entirely moot since his bankruptcy case was *dismissed* in September 1995, and his remaining arguments are founded upon outright misquotations of the Bankruptcy Code and of a Bankruptcy Court opinion. Moreover, Petitioner has made absolutely no effort to suggest how the contentions he seeks to raise would have any importance beyond the parties to the immediate dispute before the Court, or why any of them raises an "important question of federal law" that should be addressed by this Court under Rule 10. Accordingly, the Petition for Certiorari should be denied.

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purposes, should have been governed by a federal statute, 48 U.S.C. § 733a, rather than determined under state law; and (iii) the Full Faith and Credit Clause obliged the New Jersey courts to apply Puerto Rico law, rather than New Jersey law, to the state-law inheritance issues before it. As demonstrated by comparing the Questions Presented in the two petitions, these are the very same contentions that Petitioner, through his counsel, has presented in No. 98-1231.

I.

PETITIONER'S CONTENTION REGARDING THE PROPER PARTY TO PAY THE STATE-COURT MONEY JUDGMENT WAS RENDERED MOOT BY THE DISMISSAL OF PETITIONER'S BANKRUPTCY CASE, AND INVOLVES NO IMPORTANT ISSUE OF LAW

The Petition's main bankruptcy-related argument is that the New Jersey trial court erred when it entered a money judgment payable by "Charles Unanue and the bankruptcy estate of Charles Unanue." (Pet. 20-22; *see* Pet. in No. 98-1231, at 208a, 211a-213a) According to Petitioner, because he was in bankruptcy at that time, the proper party to pay the judgment should have been the bankruptcy estate only, not Petitioner individually. (*See* Pet. 20-22) Not only does this contention raise no important issue, given the unique circumstances of Petitioner's bankruptcy case, but it has become moot and therefore the Court lacks jurisdiction to address it.

A. The Issue Raised By Petitioner Is Moot

The New Jersey Superior Court's final judgment in this case was entered, against Petitioner and his bankruptcy estate, on February 23, 1995. At that time, Petitioner's bankruptcy case was still pending in the United States Bankruptcy Court for the District of Puerto Rico. However, on September 12, 1995 — several months after the trial court's entry of the money judgment that Petitioner challenges — the United States Bankruptcy Court for the District of Puerto Rico involuntarily *dismissed* Petitioner's bankruptcy case, "for cause" under 11 U.S.C. § 707(a), without granting Petitioner a discharge. (*See* Opp. in No. 98-1231, at 6a-10a)

Under the Bankruptcy Code, *see* 11 U.S.C. § 349(b)(3), this dismissal automatically operated "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position

in which they were found at the commencement of the case."[9] Thus, any distinction between Petitioner and his former "bankruptcy estate" that might have existed while the bankruptcy case was pending was eliminated, and all assets and liabilities of the bankruptcy estate were revested in the debtor, Charles Unanue, individually, by operation of law.

In light of the dismissal of Petitioner's bankruptcy case, the dispute he raises as to whether he or the bankruptcy estate should pay the New Jersey money judgment is moot. Even if this Court hypothetically were to hold that the New Jersey court erred in entering judgment against "Charles Unanue" individually and to direct that that portion of the judgment be expunged, there would still remain the judgment entered against "the bankruptcy estate of Charles Unanue" — which, upon dismissal of the bankruptcy, became Petitioner's personal liability by operation of law. Thus, Petitioner would remain responsible for payment of the New Jersey judgment, just as he is today, irrespective of the outcome of this Petition. Accordingly, the question presented in the Petition is moot and unreviewable, because "no decision on the merits by this Court can now have an effect" on the rights or obligations of any of the parties. *Board of Licensing Comm'rs v. Pastore,* 469 U.S. 238, 239 (1985); *see also Church of Scientology v. United States,* 506 U.S. 9, 12 (1992).

It is significant that, although Petitioner is presumably aware that mootness defeats this Court's jurisdiction, and Respondents presented the same argument that this matter is moot in the appellate proceedings below, Petitioner makes absolutely no effort to explain why he believes this issue still presents a live controversy.[10] It does not and, for that reason alone, the Petition must be denied.

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9. H.R. Rep. No. 95-595 at 337-38 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 6294; S. Rep. No. 95-989 at 48-49 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5834.

10. In the Appellate Division in New Jersey, Petitioner argued that it

(Cont'd)

B. The New Jersey Court Correctly Entered Judgment Against Petitioner Under The Unique Circumstances Of This Case

Even if the issue raised by Petitioner were not moot (which it is), this Court should still deny certiorari to review it because the dispute as to whether the New Jersey judgment should run against Petitioner, his bankrupt estate, or both, arises from unique circumstances and there is no likelihood that it will ever recur. The state court, in entering judgment, observed that the situation before it was "anomalous." (Pet. in No. 98-1231, at 208a) Petitioner does not suggest that a ruling regarding how the judgment in this case should have been phrased will affect any other litigants, or cite even a single case in which a comparable dispute has arisen. He has shown neither a conflict among the lower courts that could warrant a writ of certiorari under this Court's Rule 10(b), nor an "important question of federal law that . . . should be settled by this Court" under Rule 10(c). There is, therefore, no reason to grant certiorari. *See, e.g., Ticor Title Ins. Co. v. Brown,* 511 U.S. 117, 122 (1994) (per curiam) (certiorari is not granted to address an issue that is unlikely ever to recur in any other case).

(Cont'd)
was somehow unclear that a liability of a bankruptcy estate (such as a judgment) is transformed into a liability of the debtor individually following a "for cause" dismissal of the bankruptcy. Petitioner apparently believed that such a judgment would disappear into limbo upon dismissal and thereafter would never be payable by anyone. Not only was this position wholly unsupported by authority, but it makes no sense because under Petitioner's reasoning, a debtor whose bankruptcy case was involuntarily dismissed for fraud or other cause would recover the assets initially transferred into the estate but would not be liable on the estate's liabilities. This "super-discharge" would represent substantially better treatment than is available to an honest debtor, who obtains a discharge of liabilities in bankruptcy, but at the price of surrendering all of his or her non-exempt property to the estate for the benefit of the creditors.

Moreover, Petitioner's argument that the New Jersey court committed constitutional error by naming both him and his estate in the judgment is unsupported by citation of any relevant authority. Instead, his argument rests upon a series of factual assertions that are demonstrably at odds with the record and with his own prior positions in this and related litigations. For example:

- Petitioner repeatedly asserts that he was "not a . . . party-in-interest in the proceedings" before the New Jersey courts. (Pet. 20; *see also* Pet. i, ii, 2) However, Petitioner's own counsel specifically advised the New Jersey Superior Court, at a conference held long before the money judgment was entered, that Petitioner individually *was* "*certainly a party in interest*" in the litigation who should have (and was in fact afforded) the right to participate in the proceedings. (Tr. of Sept. 30, 1993 conf. at 5; emphasis added)

- Similarly, Petitioner's contention that he was "not a party in the proceeding below" at any time (Pet. ii; *see also* Pet. i, 2, 20) is plainly false as Petitioner individually was the *only* party defendant from 1987 to 1990 (before Petitioner's bankruptcy filing) and from 1995 to 1998 (after the bankruptcy was dismissed). Moreover, even while the bankruptcy case was pending and the trustee of Petitioner's no-asset "bankruptcy estate" was technically a party in New Jersey, Petitioner was at all times in actual control of the litigation, was always united in interest with his estate, and, as the New Jersey Appellate Division found, actively participated as a party to the litigation even after the bankruptcy trustee became a nominal party. (*See* Pet. in No. 98-1231, at 11a)[11]

11. As the Appellate Division's opinion observed:

[D]efendant [asserts] that the trial court erred in entering

(Cont'd)

- Petitioner asserts that because he and his bankruptcy estate were unable to obtain counsel in New Jersey, "no one [was] available to defend the interests of the bankruptcy estate" in some of the Superior Court proceedings. (Pet. 15; *see also* Pet. 19 n.5, 21) However, over a period of many years, Petitioner consistently had arranged for counsel to represent himself and the estate, jointly or separately, in New Jersey or elsewhere, whenever he wished to do so. (Indeed, the same New Jersey attorney who represented the Petitioner and the "estate" in New Jersey, both in the

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(Cont'd)

> judgment against defendant individually and thereby deprived him of his right to procedural due process . . . [W]e are persuaded that [this argument] is entirely without merit. Defendant's argument is based on the fact that during the course of the litigation, he was substituted for by the trustee in bankruptcy in his then pending bankruptcy action. . . . There was no formal order re-substituting defendant when that action was dismissed and the assets of the estate in bankruptcy revested in him. Nevertheless, defendant, as a *pro se* litigant, actively engaged in the defense of the action, seeking relief by way of cross motions, and otherwise conducting himself as a full-fledged and knowledgeable litigant. He thereby submitted himself for all purposes to the jurisdiction of the court, sought its relief, and fully participated in all proceedings. His present claim that he was denied procedural due process by the trial court rests not on any substance but on the technical oversight of the failure of entry of an order resubstituting defendant for the trustee in bankruptcy. The fact remains that the conduct of the litigation proceeded from the mutual assumption of all parties and the court that that resubstitution was, in actuality, the case, as indeed it was. We think it plain that under these circumstances, defendant must be deemed to have waived the necessity of the formal order and that he must be estopped from seeking to obtain any litigation advantage from its omission.

(Pet. in No. 98-1231, at 11a)

trial court and on appeal, remains counsel of record for Petitioner in this Court, six years later.) As the First Circuit Court of Appeals observed in denying Petitioner a stay of the New Jersey proceedings, Petitioner "ha[d] demonstrated no problems hiring numerous lawyers and law firms for all of his suits," and his decision not to authorize counsel to represent the estate, at a moment he strategically selected, merely continued his notorious pattern of "manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute." (Opp. in No. 98-1231, at 9a & n.1)

- Petitioner asserts that the New Jersey court entered "an unwarranted duplicate judgment," implying the possibility of a double recovery. (Pet. 20) However, in the course of entering the judgment, the New Jersey Superior Court judge specifically stated on the record that "[i]t's clear, of course, that there is *only one debt* being imposed, and there's certainly no basis for duplicating it by charging Mr. Unanue and the bankruptcy estate." (Pet. in No. 98-1231, at 208a; emphasis added) Thus, the specter of double recovery implied by the Petition does not exist and never has existed.

- Petitioner objects that naming him individually as a party to the judgment was "prejudicial" because it would have enabled Respondents to enforce the judgment against Petitioner's "post-bankruptcy assets" rather than against only pre-bankruptcy assets that passed into the estate. (Pet. 10; *see also* Pet. 21-22) Petitioner's retrospective assertion that the judgment should have been enforceable against only the bankruptcy estate (consisting of "pre-bankruptcy" assets), rather than his individual post-bankruptcy assets (assuming the existence of any), is *exactly the opposite* of the position he repeatedly asserted in the Bankruptcy Court at the time, which was that any New Jersey judgment would

represent a *post*-bankruptcy liability for which the estate could not be held responsible (and that Respondents' claim to the contrary was "fraudulent"). The obvious goal of Petitioner's contradictory arguments (which are now moot) was and is to avoid being required to pay any portion of the judgment from any assets at all.

- Petitioner repeatedly asserts that he did not receive notice of the proceedings that led to the money judgment. (*See* Pet. at 2, 18, 20) However, the record reflects that Petitioner, *pro se* and through counsel, was notified of each and every step in the proceedings, including the entry of final judgment against him and the bankruptcy estate. (*See, e.g.*, Pet. in No. 98-1231, at 207a) Indeed, the proposed form of final judgment that Respondents were asking the court to enter was submitted on notice to Petitioner and the bankruptcy trustee well in advance of the hearing. Petitioner's written objections to the substance and form of the judgment were before the court for its consideration and were actually addressed in the court's oral opinion. (*See, e.g.*, Pet. in No. 98-1231, at 202a-205a, 207a)

Thus, even if this matter were not moot, Petitioner has identified no impropriety in the inclusion of himself individually, as well as the bankruptcy estate, as a party responsible for paying the judgment entered by the New Jersey Superior Court. To the contrary, given the history of the New Jersey proceedings, the United States District Court's authorization that the litigation proceed to conclusion against both "the debtor" (Petitioner) *and* the estate, and the existence of both pre- and post-petition aspects to the claim that had ripened into the judgment, simple prudence dictated that the judgment be entered against *both* of the closely affiliated parties that could potentially satisfy it in whole or part. No error was committed, nor is any issue raised that is likely ever again to recur in any other case, and the Petition should be denied.

II.

PETITIONER'S REMAINING ARGUMENTS ARE FRIVOLOUS

Finally, the two cursory arguments contained in Point III of the Petition are founded upon outright misquotation of the Bankruptcy Code and the Bankruptcy Court's opinion and order dismissing Petitioner's case, and are frivolous.

First, Petitioner asserts that "the dismissal of [his] bankruptcy case vacated the judgments against the bankruptcy estate" entered by the New Jersey courts. (Pet. 27) Petitioner relies solely upon 11 U.S.C. § 349(b)(2) and (3), which he quotes as providing:

> Unless the court, for cause, orders otherwise, dismissal of a bankruptcy case vacates any order, judgment or transfer ordered and revests the property of the estate in the entity in which such property was vested immediately before the commencement of this case under this title.

(Pet. 4; *see also* Pet. 27)

Unfortunately, the Petition misleadingly fails to set forth the *entire* text of 11 U.S.C. § 349(b)(2), which actually provides that unless otherwise ordered, dismissal of a bankruptcy case "vacates any order, judgment or transfer ordered, *under section 522(i)(1), 542, 550, or 553 of this title.*" (Emphasis added) Thus, § 349(b)(2) vacates only orders entered under the specific provisions of four sections of the Bankruptcy Code ("this title") — which are orders *by the bankruptcy court* governing exempt property, setoffs, and avoidable transfers. The provision simply has nothing at all to do with, and no effect upon, state-court rulings such as the New Jersey Superior Court's judgment on Petitioner's inheritance and contract claims, particularly given the federal District Court's order lifting

the automatic bankruptcy stay and directing that the state case proceed to judgment.[12]

Petitioner also asserts that by dismissing his case, the Bankruptcy Court implicitly rejected Respondent Goya's status as a creditor of Petitioner's estate and held that "there were no existing creditors," thereby reaching a binding conclusion that precluded the New Jersey courts from entering a money judgment against him. (Pet. 27; *see also* Pet. 22) Once again, Petitioner engages in selective reading, this time of the Bankruptcy Court's dismissal opinion. Far from holding that Petitioner had "no existing creditors," the Bankruptcy Court actually observed that "there are no Claimants *other than those involved in the family dispute* amply documented in our opinions and those of the U.S. District Court cited above." (Opp. in No. 98-1231, at 9a n.3; emphasis added) The "family dispute" to which the court referred was, of course, the New Jersey litigation between Petitioner and Respondents that resulted in the judgment below. Nothing in the Bankruptcy Court's opinion is inconsistent with that judgment.

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12. *See, e.g., Blue Mountain Investments, Ltd. v. Bone*, 186 B.R. 508, 513 (D. Kan. 1995) ("[b]y its terms, § 349(b)(2) vacates only orders entered under §§ 522(i)(1), 542, 550, and 553" and did not affect orders entered under other provisions), *appeal dismissed*, 100 F.3d 967 (10th Cir. 1996); *Norton v. Hoxie State Bank*, 61 B.R. 258, 260 (D. Kan. 1986) ("Section 349(b)(2) affects only the specific actions delineated in that subsection").

CONCLUSION

For all the reasons stated above, as well as in Respondents' Brief in Opposition in No. 98-1231, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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